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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,059	12/02/2003	Jonathan W. Conaway	ECI06-GN011	2636

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TAFT, STETTINIUS & HOLLISTER LLP  
SUITE 1800  
425 WALNUT STREET  
CINCINNATI, OH 45202-3957

EXAMINER
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NGO, LIEN M

ART UNIT	PAPER NUMBER
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3754

DATE MAILED: 03/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/726,059	CONAWAY, JONATHAN W.	
	<b>Examiner</b>	<b>Art Unit</b>	
	LIEN TM NGO	3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Russell et al. (6,050,433). Russell discloses, in figs. 3-6, a closure comprising a cap 2 having an orifice 28, a channel (a groove or gutter including elements 11 and 16, see in figs. 5 and 6) being adapted to receive a sliding member 15 therein; a flexible conduit 20, wherein the sliding member is operative to position the flexible conduit between an open position and a closed position, and at least a portion of flexible conduit is located within the channel (a trench 16) in the closed position (see fig. 3); the flexible conduit including a molded retention structure 23; the trench including a dam 17 operative to discontinue fluid communication with the beverage in the closed position; the trench running parallel to the channel and parallel to a range of movement to the sliding member (see fig. 5); the sliding member being substantially radially recessed within the channel (see fig. 5), and having at least one fin 15 received within at least one guide groove 11.

In regard to claims 12-13 and 15, the closure of Russell et al. is capable for using of a container as claimed.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. (6,523,711) in view of Saklad (5,150,815) and William (6,718,664) and the disclosure of the present applications.

Hughes et al. disclose, in figs. 14 and 19, a container comprising a cup; a cap having an orifice therethrough coupled to a flexible conduit 44; a sliding member 32 coupled to the cap being operative to position the flexible conduit between an open position and a closed position; and wherein the cap includes a channel 35 therein and at least a portion of the flexible conduit is located within the channel in the closed position.

Saklad discloses a drinking container comprising an image being interposed between a clear outer cup and an inner cup.

William teaches lenticular images forming on a beverage container, and specification of the present application, page 6, paragraph [0026] sets forth that the methods of forming lenticular or other images are well known in the art.

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the cup of Hughes with lenticular image being interposed between a clear outer cup and an inner cup, as taught by Saklad in

view of the present application disclosure or Williams, in order to enhance the aesthetics of the container.

4. Claims 12, 15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. and Saklad in view of the disclosure of the present application or Williams.

Russell et al. disclose a closure for a container substantially as claimed.

Saklad in view of the disclosure of the present application or Williams teach a lenticular-image container as claimed.

Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to make a container having a cup with a lenticular images, and a closure as claimed, as taught by over Russell et al. in view of the disclosure of the present application or Williams, in order to form a beverage container having an actuator cover for a straw.

5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. and Saklad in view of the disclosure of the present application or Williams and further in view of Otake (Des. 431,150).

A container with concentric gripping rings is well known in the art, for example, Otake teaches a container with concentric gripping rings. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of Russell et al. and Saklad in view of the disclosure of the present application or Williams with concentric gripping rings in order to facilitate of handling of the container.

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Russell et al. in view of Goto et al. (Des.363, 414). A cap with gripping aid features is well known in the art, for example, Goto teaches a cap with gripping aid features. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap of Russell with gripping aid features in order to facilitated of closing and opening of the cap.

***Response to Arguments***

7. Applicant's arguments filed 12/14/05 have been fully considered but they are not persuasive.

Applicant argues that Russell fails to teach a channel where at least a portion of the flexible conduit is received within the channel and where the channel receives the sliding member; the office action impermissibly construes the channel including the channel 16 and contoured surfaces 11. However, that is not found not convincing because examiner interprets the "channel" as a "groove" or "gutter" as defined in the Merriam Webster's Collegiate Dictionary. The groove or gutter in figs. 5 and 6 of the Russell, which includes the portion of the contoured areas 11 and channel 16, can be considered as the "channel" as claimed (claim must be given their broadest reasonable interpretation, MPEP 2111). Therefore, Russell teaches a channel (11 and 16) where at least a portion of the flexible conduit 20 is received within the channel and where the channel receives the sliding member 15.

In regard applicant's argument regarding to claim 8, Russell teaches the sliding member 15 including at least one fin (the lower contoured surface of the sliding member 15) received within at least one guide groove (the contoured surface of the portion 11) formed within a side wall of the channel (examiner considered the surface portion 11 as the side wall of the channel).

In regard to claim 4, Russell teaches the flexible conduit 20 including molded retention features 23 thereon to inhibit the flexible conduit from being pulled through the orifice.

In regard to claims 12, 13 and 15, the container limitations are not considered for patentability because the container is not positively claimed in the claims. The statement of intended use of "a closure for a container" has been carefully considered, but deemed not to impose any structural limitations on the claims distinguishable over the closure of Russell. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ 2d 1674 (1987).

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3754

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN TM NGO whose telephone number is 571-272-4545. The examiner can normally be reached on Monday through Friday from 8:30 AM -6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL MAR can be reached on 571-272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LIEN TM NGO  
Primary Examiner  
Art Unit 3754

March 6, 2006

